SALIM MOHAMED

v.

SHEIKH HAMDAN SHEIKH DAUD

HIGH COURT MALAYA, JOHOR BAHRU
MAHADEV SHANKAR J
[CIVIL SUIT NO. 294 OF 1981]
13 DECEMBER 1984

TORT: *Negligence - Motor accident - Liability - Whether plaintiff entitled to any damages.*

The claim was for damages arising out of a motor accident which took place between the plaintiff's motorcycle and the rear of the defendant's taxi. The plaintiff held an L-Licence at the time.

Held:
[1] The plaintiff was wholly to blame for the accident.

[2] The Court sympathised with the plaintiff, who had sustained serious injuries as a result of the accident, but as the issue of liability was very clear, no useful purpose would be served in embarking on a quantification of damages.

[Claim dismissed with costs.]

Case referred to:
Abdul Mokhti b. Haji Ahmad v. Idris bin Ibrahim [1977] 2 MLJ 85

For the plaintiff - N. Jegatheeson; *M/s. John Ang & Jeya*
For the defendant - F.C. Cheah; *M/s. Lee & Cheah*

JUDGMENT

Mahadev Shankar J:

This is a claim for damages arising out of a motor accident which took place just after 8 p.m. on 18 June 1979 at Jalan Stulang Darat between the plaintiff's motorcycle and the rear of the defendant's taxi. The scene of the accident is a straight road but at the time of the accident it was drizzling and the road was wet and slippery.

The plaintiff held an L-Licence at the time. In his evidence in chief he said that just before the accident there was a car ahead of him and another at his rear. The car in front overtook a taxi, and the plaintiff then found himself following this taxi. He then tried to overtake the taxi but before he could do so the taxi stopped suddenly without any signal, and the right rear door was opened by a passenger who got out. The plaintiff applied his emergency brake. At first the plaintiff said his left handle bar hooked into the rear off-side door of the car. Then he said that his left handle bar got entangled with the rear off-side bumper of the taxi. He fell to the right side and sustained injuries for which he was hospitalised.

In cross-examination the plaintiff said he was tailing three cars. Two of them overtook a taxi in front of them and he found himself behind the taxi about two car lengths away. The taxi then stopped suddenly. He did not see any signal, but when he was one car length away from the taxi he saw the rear red brake lights come on. He saw the rear off-side door open after the taxi stopped.

Then he said he was about one and a half car lengths away when he saw the taxi stop and the rear off-side door open. He applied his brake but the motorcycle slipped forward. He admits he is aware that at 30 to 35 k.p.h which was his speed before the accident he should have allowed a berth of at least 3 car lengths between himself and the taxi, which was travelling 4 to 5 feet from the verge.

In re-examination plaintiff had to admit to his Counsel that he was not paying enough attention because when the brake lights of the taxi came on the plaintiff was too close to do anything. He said that he tried to avoid the passenger who alighted from the rear door and that was what caused the accident. Had the rear door not been opened he claims he would have passed the taxi safely.

In the Agreed Bundle of Documents is a copy of the plaintiff's Police Report made a month after the accident. In it he claims the taxi stopped without giving any signal. A passenger opened the rear right door when he wanted to overtake, but could not, and he immediately braked and collided with the right rear bumper of the taxi.

The taxi driver made a report about an hour after the accident in which he said he gave his signal to show his intention to stop his taxi. He heard a loud bang from the back saw a motorcycle fall to his right. Then he stopped and got out and saw the back of his car dented and the lamp broken.

But in Court he claimed that he had stopped and some passengers had got out and another was about to get in on the near-side of the taxi when the impact occurred. It was about 1 to 2 minutes after he had stopped when the impact occurred.

The discrepancy between the Police report and his evidence in Court was the subject of an attack on the taxi driver's credibility as to whether he was in fact stationary when the impacts occurred. I formed the view that he was stationary and I so find as a fact. The plaintiff himself does not contest this.

It is necessary now to look at the sketch plan. The road is 41 feet wide at the scene. The taxi is 2 feet 6 inches from the verge, and there is a berth of 4 feet to the road centre and a further leeway of 11 feet 6 inches on the other half of the road which was available for the plaintiff to have passed the taxi safely. His motorcycle came to rest 61 feet beyond the taxi on the wrong side of the road.

The plaintiff entered Jalan Stulang Darat from a side road about half a mile from the accident spot. Even accepting that his speed was 30 to 35 k.p.h he must have covered the intervening ground in a couple of minutes.

In all the circumstances I regret that I am unable to agree that the accident happened in the manner described by the plaintiff. In the time it takes a motorcycle travelling at 30 to 35 k.p.h., to traverse a distance of 1½ car lengths it is highly improbable for a taxi to stop, open a door and permit a passenger to dismount.

In my view this accident happened because the plaintiff was travelling too fast, and not keeping a proper look out. He had all of 15 feet 6 inches to pass the taxi safely but yet collided with the rear bumper and not the off-side door. That he travelled a further 61 feet after a violent impact is further evidence of his speed. And there are no brake marks on the road to support his claim that he braked.

The duty of a driver following a leading vehicle has been set out in *Abdul Mokhti b. Haji Ahmad v. Idris bin Ibrahim* [1977] 2 MLJ 85 and I would respectfully adopt the views of the late Arulanandom J on the point.

Was the taxi driver also negligent? Mr. Jegatheeson has submitted that he was because he did not signal, that he stopped on the road, and that he allowed a passenger to open the rear off-side door.

Having seen the parties I accept the taxi driver's evidence that he did signal. The plaintiff admits he saw the brake lights come on. Once he accepted that the taxi stopped and that a door was opened before the impact, the time factor squarely puts the onus for this accident on the plaintiff. Admittedly the taxi stopped on the road but I cannot see how he is to be held culpable for this act when there was ample room for the plaintiff to pass.

The only other point urged by Mr. Jegatheeson was that the taxi driver should have exercised greater than ordinary care towards the plaintiff because the latter was an L driver. I hold that in the circumstances of this case the argument is without merit. Even if the plaintiff had his L plates on, (and I am not satisfied that he did) I hold it would be unreasonable for us to expect the taxi driver to have done any more than he did.

It follows from what I have said that it is the view of this Court that the plaintiff was wholly to blame for this accident.

The plaintiff did sustain serious injuries as a result of this accident. His left leg was fractured and is now an inch shorter than the right. The left hip was dislocated. There was pain and suffering, loss of amenities, loss of earning capacity and special damages. For all these the Court must necessarily sympathise with the plaintiff but the issue of liability is so clear that no useful purpose will be served in embarking on a quantification of these damages.

Also found at [1985] 2 CLJ 166